

Award No. 3706

Docket No. 3216

2-MP-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Carey, Jr., when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Carmen)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Vacation Agreement, particularly Article 12(a), and the current agreement, Rule 9, were violated when Carman H. M. Muth was denied payment for travel time, meals and lodging on August 14th to 27th, 1957, inclusive.

2. That accordingly, the Missouri Pacific Railroad Company be ordered to compensate Carman H. M. Muth for travel time to and from his home point and for meals and lodging from August 14th to 27th, 1957, inclusive, in the amount of \$78.70 (See Form 1361 which is an itemized account of Carman Muth's expenses and submitted as Employes' Exhibit "A").

EMPLOYEES' STATEMENT OF FACTS: Carman J. E. Weeks is employed at Geneseo, Kansas which is a one-man point coming under the jurisdiction of Master Mechanic, Mr. A. J. Daniels whose headquarters are at Osawatomie, Kansas. Carman Weeks took his vacation starting August 14 to August 27, 1957, inclusive and Carman H. R. Muth, hereinafter referred to as the claimant, was sent to Geneseo, Kansas from Hoisington, Kansas (his home point which is a distance of 34 miles from Geneseo) to relieve the vacation vacancy of Carman Weeks. The claimant was paid the carmen's regular rate of pay while at Geneseo, of which there is no dispute, but the dispute arises over the fact that the Missouri Pacific Railroad Company, hereinafter referred to as the carrier, refused to pay the claimant for travel time to and from Hoisington, Kansas, his home point, and for his meals and lodging while at Geneseo, Kansas.

The claimant holds seniority at Hoisington, Kansas and was sent from his home point to fill this vacation at Geneseo, Kansas due to Carman J. E. Weeks

We must first select the rule which fits this claim. As we have pointed out above, claimant had been laid off and was unemployed, and, therefore, Rule 9 cannot apply. Rule 23 is the applicable rule, and, as we have also pointed out above, the applicable regular relief rule, i.e., Rule 23, does not provide for any additional compensation to claimant above and beyond his regular wages for work performed.

In conclusion, carrier states that Rule 23 obligated the carrier to give claimant preference to transfer to Geneseo if he desired the work. Claimant wanted the work as shown by his letter quoted in paragraph 5 of carrier's statement of facts. The same rule, Rule 23, which gave claimant preference to the work made it clear that men accepting employment under the rule and thereby required to transfer from one point to another are to make such transfer "without expense to the company". It follows, therefore, that the claim is not supported by the agreement and, therefore, must be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The factual situation disclosed in this docket is substantially the same as that involved in Award 1430 and is analogous to the situation presented in Award 1376. The dispute in those cases was between the same parties as are involved in the instant case. We see no reason for departing from the decisions in the two cases mentioned, to the extent that they hold Rule 9 to be applicable. We think the reference to Rule 23 in Award 1430 was unnecessary to the determination of that dispute, and should be regarded as obiter dictum.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March 1961.